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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1974

NO. 74-385

In the Matter of
YORK INTERNATIONAL BUILDING, INC.,

Debtor-Appellant,

and

DR. RICHARD YOU,

Stockholder-Appellant,

vs.

AARON M. CHANEY,

Trustee-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

and

APPENDICES "A", "B", & "C"

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vs.

AARON M. CHANEY,

Trustee-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on July 12, 1974.

OPINIONS BELOW

The unpublished memorandum of the United States Court of Appeals for the Ninth Circuit, is reproduced as Appendix "A" to this petition. The unpublished order of the federal district court for the District of Hawaii is reproduced as Appendix "B" to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 12, 1974, affirming the judgment of the court below (United States District Court for the District of Hawaii). Notice of entry of judgment is attached hereto as Appendix "C". Jurisdiction is invoked under 28 U.S.C., Sec. 1254(1).

QUESTIONS PRESENTED

This case concerns the protections afforded by the Fifth Amendment in reorganization proceedings, where parties may be deprived of their property without due process of law and without just compensation. Review by this Court is also sought to secure uniformity of decision as to

sales under 11 U.S.C., Sec. 516(3) as among the various circuit courts of appeals, consonant with this Court's decision in Fidelity Assurance Association v. Sims, 318 U.S. 608 (1943).

The questions raised are these:

1. Can a Chapter X proceeding for reorganization, absent an emergency or danger to the assets, be turned into a liquidation proceeding in disregard to the express interpretation handed down by this Court in Fidelity Assurance Association v. Sims, 318 U.S. 608 (1943)?

2. In light of the existing conflict among the various circuit courts as to the presence or absence of restrictions on sales under 11 U.S.C., Sec. 516(3), will this Court grant certiorari to provide uniformity of justice for corporations who are entitled to relief under Chapter X?

3. Where a Chapter X proceeding is changed from reorganization to liquidation, and the liquidating sale is held without notice, without upset price and without bidding, and where there is no emergency and the debtor has not

been declared bankrupt, are the corporate debtor and stockholders and unsecured creditors deprived of procedural due process?

4. Where a stockholder in a debtor corporation (the principal asset of which is an office building on leasehold land), at the urging of the trustee conveys the fee (which he holds) to the trustee to avoid aborting the Chapter X proceedings and where the trustee, by court order, then sells the principal asset (including the fee) over the objection of the stockholder and without compensation to the stockholder, has the stockholder been deprived by the federal court of his property without due process of law and without just compensation?

REASONS FOR GRANTING THE WRIT

This petition raises significant issues concerning the reach of 11 U.S.C., Sec. 516(3), as well as the deprivation of property without due process of law.

A. Contrary to the Philosophy Expressed by This Court in Fidelity Assurance Association v. Sims, 318 U. S. 608 (1943), the

Courts Below Turned a Chapter X Case Into a Liquidating Proceeding.

The decisions of the courts below have decided an important question of federal law which, if it is not controlled by Fidelity Assurance, supra, has not been but should be settled by this Court.

In holding that the district court could sell the assets of a debtor by court order, not in pursuance to a plan of reorganization, where there was no emergency and no imminent danger to the assets, the Ninth Circuit Court of Appeals relied on 11 U.S.C., Sec. 516(3). The opinion of the court below decides an important question of federal bankruptcy law in a manner totally at variance with Fidelity Assurance. The Ninth Circuit has in the past, and presumably will in the future, adopt the attitude expressed in In Re Dania Corporation, 400 F.2d 833 (CA 5th, 1968), to the effect that Fidelity Assurance does not apply to the problem presented here. (See citation of In Re Dania in the Ninth Circuit case, In

the Matter of Equity Funding Corp. of America, 492 F. 2d 793 [CA 9th, 1974].)

Certainly the lodestar of Fidelity Assurance is its express finding that Congress intended Chapter X to be used for the reorganization of the corporation, and "if no plan is approved or accepted, or if it is not consummated, the judge may, after hearing all persons in interest, adjudge the debtor a bankrupt or dismiss the proceedings . . . the statute does not contemplate a liquidation in a Chapter X proceeding but a liquidation in ordinary bankruptcy or a dismissal outright . . ." (ibid., 318 U.S. 621).

This petition should be considered by this Court in order to determine whether Fidelity Assurance does apply. The answer will affect not only the petitioning debtor, but will offer protection, if the answer is affirmative, to many corporations who, in the Ninth Circuit at least, now hesitate to undertake reorganization when the process may end up in liquidation.

B. The Decision of the Court Below Involves a Direct Conflict with Decisions of the Second and Third Circuits of the United States Court of Appeals.

In deciding the case below, the Ninth Circuit continued to pursue a course which it knew to be in conflict with decisions in other circuits.

In Re Solar Mfg. Corp., 176 F.2d 493 (CA 3rd., 1949), and In Re Penn. Petroleum, 188 F.2d 851 (CA 2d, 1951), are undoubtedly the leading cases on the limitations to the authority of a court to order a liquidation sale where the petitioner has come into court seeking a reorganization or an arrangement.

In 1970 the Ninth Circuit in In Re Wonderbowl, Inc., 424 F.2d 178, 180, commented upon the conflict among the circuits and supported its position that 11 U.S.C., Sec. 516(3), permitted a liquidating sale, even in the absence of an emergency, citing 6 Collier on Bankruptcy, Sec. 327, p. 627, f. 25. However, the said citation at 424 F.2d 180, omits the following portion from the Collier discussion:

"But see In Re Pure Penn. Petroleum Co., Inc., (C.A. 2d 1951) 188 F.2d 851, noted (1952) 65 Harv. L. Rev. 686, 37 Cornell L. Q. 271, where a divided court approved the Solar case and applied its restrictive interpretation to § 313(2) dealing with sales under Chapter XI arrangements."

It is also to be noted that Frank v. Drinc-Omatic, 136 F.2d 906, (CA 2d., 1943), cited by the Ninth Circuit as disapproving Solar (In Re Wonderbowl, Inc., 424 F.2d 178) is a short case, apparently involving an emergency situation. In contrast, In Re Pure Penn. Petroleum, supra, also from the Second Circuit, actually extended the Solar reasoning.

Again, in 1974, when the Ninth Circuit decided In the Matter of Equity Funding Corp. of America, 492 F.2d 793, it rejected the argument of appellants based on In Re Solar, ". . . that a § 116(3) [11 U.S.C., Sec. 516(3)] sale may be authorized only in an emergency or where there is imminent danger of loss to the corporation."

The Equity Funding Corp. case goes on to reiterate the differing views among circuits,

this time citing In Re Marathon Foundry & Machine Co., 228 F.2d 594 (CA 7th, 1955), in support of its position. However, a reading of the latter case shows that there was an emergency and that the asset sold was stock in another corporation which was not used in the conduct of debtor's business, and the trustee did not have funds on hand to redeem same.

It is respectfully submitted that this conflict of opinion among the several United States Circuit Court of Appeals eliminates equality of justice in an area which may become increasingly sensitive under present economic pressures: the corporate reorganization.

C. The Decision of the Court Below Raises Questions of Procedural Due Process Which Demand the Application of the Solar and Fidelity Assurance Cases.

As stated in Solar: "Reorganization proceedings are for the purpose of readjusting a business life so it can continue, not for dividing up its effects after the enterprise has died." Solar then cites and compares 11 U.S.C., Sec.

616(10) with 11 U.S.C., Sec. 516(3), pointing out that a sale under Sec. 516(3), " . . . is not surrounded by the rather elaborate safeguards which the Congress has provided to protect the interests of those whose money is tied up in the tottering enterprise. And it gives those interested parties no opportunity to vote on a plan after it has already had the benefit of Court scrutiny and approval. Neither does such peremptory sale have the substantial safeguards surrounding the ordinary bankruptcy proceedings."

In the case out of which this petition arises, the elaborate protective provisions of Chapter X were short circuited without following any of the usual statutory procedures.

Further, the trustee took the position that the debtor's assets were rendered "perishable" by the fact that the Lims' offer was conditioned upon almost immediate acceptance. As stated in Solar:

> " . . . This contention asserts the self-destructive proposition that an offer of purchase may itself beget the emergency

and suggests that an impatient purchaser may stampede a reorganization court out of the safeguards of Chapter X . . . " (176 F.2d at 495.)

The decisions of the Ninth Circuit propose that a bankruptcy court may, whenever it suits its judgment, order a sale of the debtor's assets and completely by-pass Chapter X procedures and protections. It is respectfully submitted that this denies due process of law and equal protection of the law to all such debtors who are so selected out, and to all their creditors and stockholders.

D. The Decision Deprived Stockholder You Of His Property Without Due Process of Law.

The appellate court approved the actions of the trustee who, by use of threat of aborting the Chapter X proceeding, persuaded the stockholder owner of the fee to convey the same to the trustee and to subordinate his stock. The trustee then proceeded to sell the entire property (including the fee), over the objection of the stockholder, and with no return to the stockholder-fee

owner from the proceeds.

In this case, and in this manner, stockholder and former fee owner You was deprived of his property by court action without due process of law and without just compensation. It is respectfully submitted that this Court should exercise its inherent power of supervision over the administration of the federal district courts and decide whether 11 U.S.C., Sec. 516(3) can be employed to decree a sale of the assets of a debtor under Chapter X, absent any emergency, particularly where a portion of the assets sold had been contributed to the debtor by a stockholder during the pendency of the federal court proceedings and at the urging of the court and the officer of the court; viz, the trustee.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides in pertinent part that:

> "No person . . . shall be . . . deprived of . . . property, without due process of law . . . without just compensation."

STATUTES AND RULE INVOLVED

This case also involves:

11 U.S.C., Section 516(3):

"Special powers enumerated. Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter [§501 et seq. of this title] conferred and imposed upon him and the court--

"(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; . . ."

11 U.S.C., Section 587:

"Trustee's rights, powers, and duties. Where not inconsistent with the provisions of this chapter [§501 et seq. of this title], a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 44 of this Act [§72 of this title], and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor."

11 U.S.C., Section 606:

"Persons entitled to be heard. The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter [§501 et seq. of this title]. The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees."

Rule 7(b), Federal Rules of Civil Procedure:

"Pleadings Allowed; Form of Motions.

"(b) Motions and Other Papers.

"(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

"(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules."

INTRODUCTORY STATEMENT

This petition presents to this Court the question whether reversible error was committed when the United States District Court for the District of Hawaii ordered the sale of the assets of the debtor: (1) after the assets (downtown office building in Honolulu) had been operated at a profit by the Trustee in possession for a period of four and one-half years under the auspices of Chapter X; (2) in preference to a plan of reorganization; (3) absent any emergency or danger to the assets; (4) without notice of the particular sale; (5) without upset price or bidding; (6) without declaring the debtor bankrupt; and (7) where sale included not only the leasehold interest owned by the debtor at the time the reorganization petition was filed, but the fee, which had been contributed by Stockholder You under the threat that the Chapter X proceedings would be aborted if the assets were not enhanced by the fee.

This petition also shows to this Court the

need to make uniform among the United States Court of Appeals the substantive and procedural requirements for a sale under 11 U.S.C., Sec. 516(3), the Ninth Circuit having affirmed the sale described above, and having found that the same was authorized under the said section of the Code.

STATEMENT OF THE CASE

A. The History of Debtor Under Chapter X.

On September 23, 1968, principal Stockholder You and his fellow corporate officers took York International Building, Inc. into the United States District Court for the District of Hawaii, under Chapter X, (BK-68-293) because the corporation was unable to meet its debts as they accrued. It was in need of relief. The stockholders desired, in good faith, to effect a plan of reorganization. The pendency of Massachusetts Mutual's foreclosure action in the state court was conclusive proof of financial distress warranting the intervention of the reorganization court (R. 2-3; 59).

Aaron M. Chaney, who had been appointed foreclosure commissioner in the state court, was appointed Chapter X trustee (R. 9-17) and placed in possession of the property, a twelve-story leasehold office building in downtown Honolulu.

On November 14, 1968, Massachusetts Mutual filed an "Application to Dismiss Debtor's Petition," pointing out that the debtor was merely a lessee on the real property owned by Dr. You, and asserting that the value of the leasehold and the improvements was not sufficient to pay the Massachusetts Mutual mortgage in the amount of $1,310,506.40 (R. 56-58).

In the exchanges that followed, the trustee asked the court for permission to sell (Tr. 16) and Massachusetts Mutual filed a memorandum stating that the federal district court had no authority in a Chapter X proceeding to order a sale of all the assets of the debtor in lieu of a plan of reorganization or in the absence of an emergency (R. 86-95).

On February 3, 1969, the attorney for

Trustee Chaney, in open court, asked if Dr. You would "contribute the ownership of the fee to the corporation for the purpose of working out a plan of reorganization to the extent that the creditors are now paid off . . ." (Tr. 45).

Massachusetts Mutual continued to push for the return to the state court and foreclosure, and the trustee's attorney continued to press Dr. You for the conveyance of the fee (time records, R. 653, 613).

By July 22, 1969, an appraisal had come in at $1,910,000; Dr. You had agreed to convey the fee; the trustee asked that he be continued for a year in which time there was a reasonable possibility that a feasible plan of reorganization could be achieved (Tr. 6-21).

The Massachusetts Mutual petition to dismiss the application was then denied (R. 228-232).

Further scurmishings between the trustee on one side and Dr. You and his nephew, Dunn, on the other resulted in subordination of their

stockholdings in the amount of $180,000.

On December 3, 1970, the trustee announced:

> "The corporation, at the commencement of this proceeding, owned only a long-term leasehold estate in the real property referred to above; however, the Trustee has been successful in getting the remainder interest, previously held by certain creditors and stockholders, transferred to him and he now holds the property in fee simple. This will substantially aid efforts to reorganize the corporation." (R. 817.)

The trustee then invited suggestions from all creditors, stockholders and other parties in interest for a formulation of a plan of reorganization (R. 821).

Massachusetts Mutual promptly responded under date of February 4, 1971, with a "plan" of reorganization which was merely an offer to purchase for $1,450,000, the property which had been appraised at $1,910,000.

The trustee was ordered to file a plan of his own, or report the reasons why a plan could not be effected (March 16, 1972, R. 1039).

By March 28, 1972, interim compensation

was allowed the trustee as follows:

5% of gross rentals	$ 45,955.66
Royal Maintenance (a subsidiary of Aaron M. Chaney).....	49,504.18
Commissions to salesmen employed by Aaron M. Chaney ...	15,967.58
	$111,427.42

Mr. Chaney then applied for and was granted an additional $30,000 for "extraordinary services" (Tr. 4/14/72, pp. 32-34; Order, R. 1129).

On May 8, 1972, the federal district court denied Massachusetts Mutual's application and struck its plan of reorganization (R. 1133-1136).

On December 29, 1972, Trustee Chaney filed an "Application for Approval of Sale of Real Estate or Approval of Plan or Other Instructions" (R. 1163-1196).

The offer of sale noticed was from a specified purchaser at a specified price, to purchase 16,000 square feet of fee simple land and a twelve-story office building. The plan of reorganization submitted simultaneously stated that only unsecured claims, outside old common stock and subordinated old common stock were affected

by the plan and entitled to vote on it.

In the hearings held in February on various continued dates, Massachusetts Mutual objected to reorganization on the grounds that it only brought its mortgage current and did not accelerate it (Tr. 2/5/73, p. 2). Stockholder You and the debtor objected to the sale because the price was below appraisal, paid nothing to the stockholders, and only a percentage on unsecured claims (Tr. 2/5/73, p. 2).

On February 5, 1973, the trustee testified that the reorganization plan was feasible (Tr. 38-48).

The transcripts show that the proceedings, continued to February 21, 1973 (Tr. 2/5/73, p. 161) commenced on that date at 4:05 P.M. At that place and time, the attorney for the trustee announced a "new development," that is, a new offer from new purchasers. Copies of said offer had not been distributed prior to the hearing, yet, despite complete lack of notice, and despite objections, the "new offer" was accepted by the

court before it adjourned at 5:10 P. M.

The Order Authorizing Sale of Real Property was entered on March 2, 1973 (R. 1235-1240; Appendix "B").

B. The History of the Appeal to the Ninth Circuit Court of Appeals.

Notice of Appeal from the Order Authorizing Sale of Real Property was filed on April 2, 1973 (R. 1267-1268).

On July 11, 1973, after a fruitless effort to obtain the same relief in the court below, Trustee Chaney, through his attorney, moved to dismiss the appeal in the Ninth Circuit, which said motion was renewed on August 9, 1973, after the appeal was docketed. In this motion, the trustee alleged that the sale had been consummated. The Ninth Circuit denied the renewed motion to dismiss.

The appeal was fully briefed and argued orally before the Ninth Circuit Court. The appellants before that court, as here, submitted that they had been deprived of their property without

due process of law: "When, in a reorganization proceeding under Chapter X, (the federal district court) disposes of Debtor's entire assets by accepting a 'plan' or 'offer to purchase' without any prior notice to the Debtor, creditors and stockholders, and without any vote . . ." (O. B., pp. 1-2). The appellants further submitted that by the sale, Stockholder You had been deprived of his property in violation of the Fifth Amendment: "Where, under threat of aborting the Chapter X proceedings, a trustee obtains fee simple title to the Debtor's leasehold property from the fee-owner, together with a stipulation to subordinate his common stock . . ." (O. B., p. 2). Then followed additional questions concerning Chapter X; viz, the effect of failure to serve notice in accordance with 11 U.S.C., Sec. 606, and Rule 7(b), F.R.C.P.; the effect of aborting Chapter X proceedings by the sale of the Debtor's sole asset without declaring the Debtor bankrupt. (O. B., pp. 2-3.)

In his answering brief, the trustee replied

first with a puffery on the services he had performed for the debtor, but as he came down to the merits, he asserted that ". . . a sale of property is entirely different from a plan of reorganization and the procedures to be followed are also entirely different." (A.B., p. 10); and ". . . the complicated provisions and procedures for plans of reorganization under Chapter X cannot be forced to fit sales of property . . ." (A.B., p. 13). The trustee then cited 11 U.S.C., Sec. 516(3) and 6 Collier on Bankruptcy, Sec. 3.27(2) at p. 623, omitting footnotes (A.B., pp. 17-18).

The appellants' Reply Brief, below, dealt extensively with the lack of due process, the lack of emergency, contrasted with the rush in putting through the sale to the last offerers, the Lims. It pointed out to the Ninth Circuit that the Lims were not bona fide purchasers without notice.

It also pointed out that the effect of the sale was to bankrupt a corporation which had been reorganizable (A.B., pp. 12-13).

The Ninth Circuit made short work of the case, finding that "The sale in question was not a reorganization plan, nor was it made pursuant to such a plan. It was made in lieu of such a plan, was authorized under 11 U.S.C., § 516(3), and was made in conformity with that section. The court did not abuse its discretion in ordering or approving the sale." (Appendix "A".)

The rest of the points on appeal were dismissed as frivolous, not before the court, or moot.

Thus, the Ninth Circuit Court declared that a sale under 11 U.S.C., Sec. 516(3), is a legally acceptable alternative which can be forced upon a corporation which goes into the federal court for reorganization under Chapter X, and may be ordered without any of the attendant procedural safeguards required by Congress under other sections of the Bankruptcy Act.

Today's social problems require something more in the way of procedural protection and substantive due process, as well as equality in

the administration of justice, than is displayed by this case.

The Ninth Circuit Court's decision erroneously construes and applies 11 U.S.C., Sec. 516(3), and the said circuit court will continue to cause irreparable harm by so doing, until reversed by the Supreme Court of the United States.

This is a petition which requires plenary review.

CONCLUSION

For the foregoing reasons, petitioners urge the Court to grant the writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

DATED: Honolulu, Hawaii, September 30, 1974.

Respectfully submitted:

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APPENDIX "A"

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In the Matter of YORK INTERNATIONAL BUILDING, INC., *Debtor-Appellant,* and DR. RICHARD YOU, *Stockholder-Appellant,* vs. AARON M. CHANEY, *Trustee-Appellee.*	No. 73-2209

[July 12, 1974]

On Appeal from the United States District Court
for the District of Hawaii

Before: DUNIWAY and SNEED, Circuit Judges,
and CARR,* District Judge

MEMORANDUM

The sale in question was not a reorganization plan, nor was it made pursuant to such a plan. It was in lieu of such a plan, was authorized under 11 U.S.C. §516(3), and was made in conformity with that section. The court did not abuse its discretion in ordering or in approving the sale.

Appellants' remaining contentions fall into three categories: some are frivolous, others are not properly before us in this appeal, and others are mooted by our decision as to the sale. None merits consideration here.

Affirmed.

*The Honorable Charles H. Carr, United States District Judge for the Central District of California, sitting by designation.

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APPENDIX "B"

ORDER AUTHORIZING SALE OF REAL PROPERTY

At Honolulu, in said district, this 2 day of March, 1973

The Trustee's Application for Approval of Sale of Real Estate or Approval of Plan or Other Instructions duly came on for hearing on January 19, 1973 and for further hearings on February 5, 1973, February 6, 1973, and February 21, 1973.

Notice of said hearing was given as prescribed by this Court in its Order of December 29, 1972.

The following parties and attorneys appeared:

Aaron M. Chaney, Trustee

H. William Burgess, Attorney for Trustee

Dr. Richard W. You, Stockholder and former Officer and Director of Debtor, who opposed the sale of real estate and asked for an extension of time within which to raise new capital.

Edward Y. N. Kim, Attorney for Debtor,

who opposed the sale and also requested the same extension of time as requested by Dr. You.

Thomas P. Huber, Attorney for Massachusetts Mutual Life Insurance Company, the first priority secured creditor, who opposed the Plan of Reorganization but favored the sale of the real estate.

Kwan Hi Lim, Attorney for Liberty Bank and Mid-Pac Lumber, secured creditors, who opposed the Plan but favored the sale of the real estate.

Wilfred H. C. Youth, Attorney for Kenneth and Rose Dunn, secured creditors ($60,000) and unsecured creditors (an additional $60,000), who opposed the Plan but favored the sale of the real estate.

The Court has considered the evidence, arguments, and authorities presented by all parties and finds as follows:

1. The Debtor and its principal stockholder, Dr. Richard W. You, have exerted commendable efforts, have shown the best of intentions and have expressed great hope of being able to find additional equity capital. However, in the four and one-half years since this proceedings started no new equity capital has been produced. Further delay at this point would jeopardize a favorable sale for the estate and is not warranted.

2. The Plan of Reorganization, while fair and equitable, is of marginal feasibility without the contribution of substantial new equity capital and therefore is not approved.

3. The real property located at 1270 Queen Emma Street, more particularly described in Exhibit "A" attached hereto is in the possession of the Trustee and is subject to certain liens, encumbrances and interests.

4. Said real property was appraised by the court appointed appraiser, John J. Hulten, M.A.I., for One Million Nine Hundred Thousand

Dollars and subsequently by Mr. Philip W. Won, M.A.I., who was engaged by the Debtor, for Two Million Three Hundred Thousand Dollars.

5. During the years of administration of this estate the Trustee has exerted diligent efforts to sell said real property, has advertised it for sale from time to time in local and national newspapers, has placed a "For Sale" sign on the premises, has prepared sales brochures, rent rolls, financial statements, has shown it to numerous persons and has contacted and been contacted by numerous prospective purchasers, none of whom have made offers as favorable as the present one.

6. There is an equity in said property over and above all liens, encumbrances and interests.

7. It is in the best interest of this estate that said real property be sold free and clear of all liens, encumbrances and interests (except for the lien of the mortgage of Massachusetts Mutual Life Insurance Company which is to be assumed, as modified, by the purchasers) and that the

rights of all creditors (except Massachusetts Mutual Life Insurance Company) in said property be transferred to the proceeds derived from the sale thereof.

8. The offer received by the Trustee from Max Sung Hi Lim and Lily S. M. Lim, dated February 19, 1973, to purchase said real property for a total purchase price of One Million Seven Hundred Fifty Thousand Dollars, net of real estate commission, upon the terms and conditions as set forth in the Offer dated February 19, 1973, filed in Court on February 21, 1973 as Trustee's Exhibit 17, is a fair and reasonable price therefor. The Lim offer is more favorable to this estate than the One Million Seven Hundred Sixty Six Thousand Dollar offer from National Securities and Investment, Inc. which requires payment of a Fifty Thousand Dollar real estate commission and which has less cash down.

9. It is in the best interest of said estate that said sale be approved and authorized.

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED that the sale of the real property located at 1270 Queen Emma Street, Honolulu, Hawaii, consisting of a 12 story office building and approximately 16,000 square feet of fee simple land, more particularly described in Exhibit "A" attached hereto, to Max Sung Hi Lim and Lily S. M. Lim, husband and wife, is approved and confirmed and the said Trustee is directed to execute and deliver to said purchasers a good and sufficient deed to said property free and clear of all encumbrances except as noted on Exhibit "A" attached hereto, the deed to provide that the mortgage of Massachusetts Mutual Life Insurance Company shall be assumed, as modified, by the said purchasers, and

IT IS FURTHER ORDERED that the rights of all creditors herein holding liens, encumbrances or interests in or upon said real property (except for Massachusetts Mutual Life Insurance Company) be and they hereby are transferred to the proceeds derived from the sale hereof.

/s/ Martin Pence
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

/s/ H. William Burgess
H. WILLIAM BURGESS
Attorney for Trustee

/s/ Edward Y. N. Kim
EDWARD Y. N. KIM
Attorney for Debtor

/s/ Robert B. Bunn
for THOMAS P. HUBER
Attorney for Massachusetts Mutual Life Insurance Company

/s/ Kwan Hi Lim
KWAN HI LIM
Attorney for Liberty Bank and Mid-Pac Lumber

/s/ Wilfred H. C. Youth
WILFRED H. C. YOUTH
Attorney for Kenneth Dunn and Rose Dunn

APPENDIX "C"

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT
U. S. Court of Appeals and Post Office Building
7th & Mission Streets, P.O. Box 547
San Francisco, California 94101

JUL 15 1974

Re: No. 73-2209 IN THE MATTER OF YORK INTERNATIONAL BUILDING, INC. AND DR. RICHARD YOU VS. AARON M. CHANEY

Dear Sir:

An memorandum in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered 7-12-74 affirming the judgment or order of the court below (or administrative agency).

Pursuant to Rule 41(a) the mandate of this court will issue 21 days after the entry of judgment, unless the court enters an order otherwise, or grants a stay of the mandate or a petition for rehearing if filed. If a petition for rehearing is filed and denied, the mandate shall issue 7 days after the entry of the order denying the petition.

Very truly yours,

, Clerk
U.S. Court of Appeals